

RECEIVED
CENTRAL FAX CENTER

JAN 06 2006

Law Offices of

SENNIGER POWERS

One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102Telephone (314) 231-5400
Facsimile (314) 231-4342

FACSIMILE TRANSMITTAL COVER SHEET

DATE: January 6, 2006 ATTORNEY DOCKET NUMBER: KCC 4846
(K-C 16,993)

PTO FACSIMILE NUMBER: (571) 273-8300

PLEASE DELIVER THIS FACSIMILE TO: Examiner Karin M. Reichle
THIS FACSIMILE IS BEING SENT BY: Richard L. Bridge
NUMBER OF PAGES: 30 INCLUDING COVER SHEETTIME SENT: 4:30 p.m. OPERATOR'S NAME Brenda Witschorek

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to
the Patent and Trademark Office on the date shown below.Brenda C. Witschorek
Typed or printed name of person signing certificationBrenda C. Witschorek 1/6/06
Signature DateType of paper transmitted: Appeal BriefApplicant's Name: Linda M. DorschnerSerial No. (Control No.): 10/034,846 Examiner: ReichleFiling Date: 12/28/01 Art Unit: 3761 Confirmation No.: 9653Application Title: RATIO OF ABSORBENT AREA TO OUTER PERIPHERAL
AREA FOR DISPOSABLE ABSORBENT ARTICLESIF YOU DO NOT RECEIVE ALL PAGES CLEARLY, CALL BACK AS SOON AS
POSSIBLE. CONFIRMING NUMBER IS (314) 231-5400.

RECEIVED
CENTRAL FAX CENTER KCC 4846 (K-C 16,993)
PATIENT

JAN 06 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Linda M. Dorschner Art Unit: 3761
Serial No.: 10/034,846
Filed: December 28, 2001
Confirmation No.: 9653
For: RATIO OF ABSORBENT AREA TO OUTER PERIPHERAL AREA FOR
DISPOSABLE ABSORBENT ARTICLES
Examiner: Karin M. Reichle

January 6, 2006

APPEAL BRIEF

Richard L. Bridge, Reg. No. 40,529
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

KCC 4846 (K-C 16,993)
PATENTTABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
I. REAL PARTY IN INTEREST.....	1
II. RELATED APPEALS AND INTERFERENCES.....	1
III. STATUS OF CLAIMS.....	2
IV. STATUS OF AMENDMENTS.....	2
V. SUMMARY OF CLAIMED SUBJECT MATTER.....	2
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....	5
VII. ARGUMENT.....	6
A. Claims 83-89, 91-92, and 106-111 are submitted to be unanticipated by and patentable over WO 96/18367 (Clear et al.).....	6
CLAIM 107.....	6
CLAIM 109.....	12
CLAIM 111.....	13
B. Claims 83-89, 91, 92, 100-102, and 106-111 are submitted to be unanticipated by and patentable over U.S. Patent No. 5,904,673 (Roe et al.).....	15
CLAIM 107.....	15
CLAIM 109.....	18
CLAIM 111.....	18
VIII. CONCLUSION.....	19
CLAIMS APPENDIX.....	21
EVIDENCE APPENDIX.....	26
RELATED PROCEEDINGS APPENDIX.....	26

KCC 4846 (K-C 16,993)
PATENTTABLE OF AUTHORITIES**CASES**

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d
628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)..... 7

In re Robertson, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).
..... 11

MANUAL OF PATENT EXAMINING PROCEDURE

M.P.E.P. §2131..... 7

M.P.E.P. §2112..... 11

KCC 4846 (K-C 16,993)
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Linda M. Dorschner Art Unit: 3761
Serial No.: 10/034,846
Filed: December 28, 2001
Confirmation No.: 9653
For: RATIO OF ABSORBENT AREA TO OUTER PERIPHERAL AREA FOR
DISPOSABLE ABSORBENT ARTICLES
Examiner: Karin M. Reichle

January 6, 2006

APPEAL BRIEF

This is an appeal from the final rejection of the claims pending in the above-identified application as set forth in the final Office action dated September 6, 2005. A Notice of Appeal was filed on November 7, 2005.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any pending appeals or interferences which may be related to, directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

KCC 4846 (K-C 16,993)
PATENT**III. STATUS OF CLAIMS**

Claims 83-93, 100-102, and 106-111 are currently pending in the application. Claims 1-69, 95, 99, and 105 have been cancelled, and claims 70-82, 94, 96-98, 103, and 104 have been withdrawn from consideration. A copy of the pending claims appears in the Claims Appendix of this Brief.

Claims 83-93, 100-102, and 106-111 stand rejected. Claims 83-89, 91-92, and 106-111 are rejected under 35 U.S.C. §102(b) as being anticipated by WO 96/18367 (Clear et al.). Claims 83-89, 91, 92, 100-102, and 106-111 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,904,673 (Roe et al.). Claim 90 is rejected as being obvious under 35 U.S.C. §103(a) in view of Clear et al. in combination with WO 00/38913 (Morman). Claim 93 is rejected as being obvious under 35 U.S.C. §103(a) in view of Roe et al. in combination with EP 0 650 714 (Coles et al.)¹.

The rejections of claims 83-93, 100-102, and 106-111 are being appealed.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only

¹ Appellants believe this to be the reference which was referred to by the Examiner as "Divo et al, PCT '714" on page 6 of the final Office Action. Appellants were unable to find any PCT references in which Divo was listed as an inventor and the last three digits were 714.

KCC 4846 (K-C 16,993)
PATENT

to facilitate the Board's understanding of the subject matter of this appeal.

With reference to the present specification and drawings, in one aspect the claimed subject matter is directed generally to a disposable absorbent article 1 having a longitudinal axis, a lateral axis, a lateral centerline generally defining longitudinal front and back regions 103, 101 of the article, a front end, and a back end. See page 7, lines 1-5, page 28, lines 15-17, and Figs. 2-5. The article 1 comprises a liner 5 adapted for contiguous relationship with a wearer's body. See page 4, lines 9-13, page 8, lines 24-28, and Figs. 2-5. An outer cover 17 is in generally opposed relationship with the liner 5. See page 8, lines 24-28 and Fig. 2. The outer cover 17 has a length and a width and is stretchable along substantially the entire length of the outer cover. See page 15, lines 26-28 and Figs. 2-5. The article 1 has a surface area 45 defined at least in part by the outer cover 17. See page 12, lines 10-11, page 27, lines 20-22 and Figs. 3-5. An absorbent core 3 is disposed between the liner 5 and the outer cover 17 and has a front edge, a back edge, (see page 8, lines 26-28 and Fig. 2) and a surface area 35 which is less than about 50% of the surface area 45 of the article 1. See page 32, lines 23-26 and Figs. 2-5. The front edge of the absorbent core 3 is in a closer proximity to the front end of the article than the back edge of the absorbent core is to the back end of the article. See page 27, lines 11-15 and Figs. 2-5. At least a portion of the absorbent core 3 is bonded to the outer cover 17. See page 27, lines 10-11 and Figs. 3-5.

In another aspect, the claimed subject matter is directed generally to a disposable absorbent article 1 having a longitudinal axis, a lateral axis, a lateral centerline

KCC 4846 (K-C 16,993)
PATENT

generally defining longitudinal front and back regions 103, 101 of the article, a front end, and a back end. See page 7, lines 1-5, page 28, lines 15-17, and Figs. 2-5. The article 1 comprises a liner 5 adapted for contiguous relationship with a wearer's body. See page 4, lines 9-13, page 8, lines 24-28, and Figs. 2-5. The liner 5 has a length and a width and is stretchable along substantially the entire length of the liner. See page 12, lines 22-24 and Fig. 2. An outer cover 17 is in generally opposed relationship with the liner 5. See page 8, lines 24-28 and Fig. 2. The article 1 has a surface area 45 defined at least in part by the liner 5. See page 12, lines 10-11, page 27, lines 20-22 and Figs. 3-5. An absorbent core 3 is disposed between the liner 5 and the outer cover 17. See page 8, lines 26-28 and Fig. 2. The absorbent core 3 has a front edge, a back edge, and a surface area 35 which is less than about 50% of the surface area 45 of the article 1. See page 32, lines 23-26 and Figs. 2-5. The front edge of the absorbent core 3 is in a closer proximity to the front end of the article 1 than the back edge of the absorbent core is to the back end of the article. See page 27, lines 11-15 and Figs. 2-5. At least a portion of the absorbent core 3 is bonded to the liner 5. See page 24, lines 23-25 and Fig. 2.

In yet another aspect, the claimed subject matter is directed generally to a disposable absorbent article 1 having a longitudinal axis, a lateral axis, a lateral centerline generally defining longitudinal front and back regions 103, 101 of the article, a front end, and a back end. See page 7, lines 1-5, page 28, lines 15-17, and Figs. 2-5. The article 1 comprises a liner 5 adapted for contiguous relationship with a wearer's body. See page 4, lines 9-13, page 8, lines 24-28, and Figs. 2-5. An outer cover 17 is in generally opposed

KCC 4846 (K-C 16,993)
PATENT

relationship with the liner 5. See page 8, lines 24-28 and Fig. 2. At least one of the liner 5 and the outer cover 17 is stretchable in at least one direction. See page 12, lines 22-24, page 15, lines 26-28, and Figs. 2-5. The article 1 has a surface area 45 defined at least in part by at least one of the liner and the outer cover. See page 12, lines 10-11, page 27, lines 20-22 and Figs. 3-5. An absorbent core 3 is disposed between the liner 5 and the outer cover 17. See page 8, lines 26-28 and Fig. 2. The absorbent core 3 has a front edge, a back edge, and a surface area 35 which is less than about 50% of the surface area 45 of the article 1. See page 32, lines 23-26 and Figs. 2-5. The front edge of the absorbent core 3 is in a closer proximity to the front end of the article 1 than the back edge of the absorbent core is to the back end of the article. See page 27, lines 11-15 and Figs. 2-5. The at least one of the liner 5 and the outer cover 17 extend beyond the front and back edges of the absorbent core 3 and are stretchable adjacent the front and back edges. See page 12, lines 22-24, page 15, lines 26-28, and Fig. 2.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Appellants appeal the rejection of claims 83-89, 91-92, and 106-111 under 35 U.S.C. §102(b) as being anticipated by WO 96/18367 (Clear et al.).

B. Appellants appeal the rejection of claims 83-89, 91, 92, 100-102, and 106-111 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,904,673 (Roe et al.).

KCC 4846 (K-C 16,993)
PATENT**VII. ARGUMENT**

A. Claims 83-89, 91-92, and 106-111 are submitted to be unanticipated by and patentable over WO 96/18367 (Clear et al.).

CLAIM 107

Claim 107 is directed to a disposable absorbent article having a longitudinal axis, a lateral axis, and a lateral centerline generally defining longitudinal front and back regions of the article. The article has a front end and a back end and comprises:

a liner adapted for contiguous relationship with a wearer's body;

an outer cover in generally opposed relationship with the liner, the outer cover having a length and a width and being stretchable along substantially the entire length of the outer cover;

the article having a surface area defined at least in part by said outer cover; and

an absorbent core disposed between the liner and the outer cover and having a front edge, a back edge, and a surface area which is less than about 50% of the surface area of the article, the front edge of the absorbent core being in a closer proximity to the front end of the article than the back edge of the absorbent core is to the back end of the article, at least a portion of the absorbent core being bonded to said outer cover.

To anticipate the claimed subject matter, a single cited reference must disclose, explicitly or inherently, each and

KCC 4846 (K-C 16,993)
PATENT

every element of the claim.² Appellants submit that Clear et al. fail to disclose or otherwise even suggest a disposable absorbent article in which a front edge of the absorbent core is in closer proximity to a front end of the article than the back edge of the absorbent core is to a back end of the article.

Clear et al. disclose an absorbent article with a fit enhancement system wherein the absorbent article has a longitudinal centerline 100 (Figs. 1 and 2) and a transverse centerline 102. Extending longitudinally outward from the crotch region 48 of the article at one end thereof is a front fit region 45 and at the other end is a rear fit region 47. Longitudinally beyond the front and rear fit regions 45, 47 are respective front and back waist regions 46 and 44. An absorbent core 28 of the article of Clear et al. is disposed between the outer cover and liner of the article within the crotch region 48. At page 7, lines 13-15, Clear et al. teach that the absorbent core 28 may be manufactured in a wide variety of sizes and shapes. Clear et al. further teach that the size and absorbent capacity of the absorbent core 28 may also be varied to accommodate wearers ranging from infants through adults.

In the final Office action, the Examiner takes the position that Clear et al. expressly teach that the front edge of the absorbent core 28 of Clear et al. is in closer proximity to the front end of the article than the back edge of the absorbent core is to the back end of the article. See page 3, section 4, first paragraph of the final Office action, and page

² M.P.E.P. §2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

KCC 4846 (K-C 16,993)
PATENT

7, lines 2-4 of the final Office action. Specifically, the Examiner relies on page 13, lines 12-15; page 12, line 15 through page 13, line 2; and the paragraph bridging pages 6-7 of Clear et al. Addressing these in the order in which they appear in Clear et al., the paragraph bridging pages 6-7 teaches 1) that the topsheet 24 and backsheet 26 are sized larger in length and width than the absorbent core 28, and 2) the topsheet and backsheet extend beyond the edges of the absorbent core to form the periphery of the diaper 20. There is no disclosure in this cited passage of the position of the front edge of the absorbent core relative to the front end of the article and the position of the back edge of the absorbent core relative to the back end of the article other than that the absorbent core ends are certainly spaced inward from the front and back edges of the article.

The cited passage starting at page 12, line 15 of Clear et al. teaches that the fit panels 38 extend longitudinally outward from the end edges 62 of containment assembly 22. The fit panels 38 are also disclosed as being elastically extensible longitudinally to allow a wider range of body rise dimensions. Again, there is no disclosure in this cited passage of the position of the front edge of the absorbent core relative to the front end of the article and the position of the back edge of the absorbent core relative to the back end of the article.

Most notable is the cited passage at page 13, lines 12-15 of Clear et al. The paragraph in which this passage appears discloses that the elastic extensibility of the fit panel 38 in the rear fit region 45 is greater than the elastic extensibility of the fit panel 38 in the front fit region 47 of the article. At the cited passage, Clear et al. disclose as one

KCC 4846 (K-C 16,993)
PATENT

example a fit panel in the rear fit region 45 that is 1.5 to 2 times the longitudinal length of a fit panel in the front fit region 47 would have 1.5 to 2 times the elastic extensibility of the fit panel in the front fit region. While Clear et al. do not expressly disclose any embodiments in which the fit panel 38 at the rear fit region 45 is longitudinally larger than the fit panel at the front fit region, the cited passage does appear to suggest that such an embodiment is possible. However, as was the case with the other cited passages, this passage fails to teach the position of the front edge of the absorbent core relative to the front end of the article and the position of the back edge of the absorbent core relative to the back end of the article, including in the example referenced in the cited passage. In fact, the relative positions between the absorbent core and the front and back edges of the article (other than that the ends do indeed extend outward from the absorbent core as discussed above) are not discussed anywhere else in Clear et al.

Accordingly, there is no express disclosure found anywhere in Clear et al. that the front edge of the absorbent core 28 is in closer proximity to the front end 52 of the article than the back edge of the absorbent core is to the back end 52 of the article. Rather, the relevant evidence of record in Clear et al. is that 1) the topsheet 24 and backsheet 26 extend outward of the absorbent core 28 (meaning that the ends of the absorbent core must be spaced inward from the ends 52 of the article) and 2) the fit panels 38 in the rear fit region 45 may in one example extend longitudinally 1.5 to 2 times more than the fit panels in the front fit region 47. From this, the Examiner apparently concludes that Clear et al. is expressly teaching that where the rear fit region 45 is longer than the

KCC 4846 (K-C 16,993).
PATENT

front fit region 47 then the front edge of the absorbent core 28 is necessarily closer to the front end of the article than the back edge of the absorbent core is to the back end of the article.

With all due respect, the Examiner assumes facts that are not expressly disclosed by Clear et al. Nowhere do Clear et al. teach a necessary relative position between the front edge of the absorbent core 28 and the front end of the article, and between the back edge of the absorbent core and the back end of the article. Specifically, there is no express disclosure that in an embodiment in which the rear fit panel is longer than the front fit panel that the front edge of the absorbent core 28 is closer to the front end of the article than the back edge of the core is to the back end of the article. Rather, the Examiner assumes that upon changing the relative lengths of the front and rear fit panels that the length and/or position of the absorbent core within the article does not change. However, Clear et al. fail to provide any disclosure one way or the other. Thus, while the Examiner denies any reliance on an inherency position (see page 7, lines 2-4 of the final Office action), the Examiner's assumption of the relative positions of the front and back edges of the absorbent core to the respective front and back ends of the article is indeed an inherency argument.

To establish inherency, the prior art "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of

KCC 4846 (K-C 16,993)
PATENT

circumstances is not sufficient."³ Such evidence is clearly absent in this case. The Examiner takes the position that in the example provided at page 13, lines 12-15 of Clear et al. in which the rear fit panel is longer than the front fit panel that the front edge of the absorbent core 28 is necessarily closer to the front end of the article than the back of the core is to the back end of the article. However, this is but only one possible result of the back fit region 45 being longer than the front fit region 47.

In fact, the only evidence of record regarding the positions of the front and back ends 52 of the article relative to the front and back edges of the absorbent core 28 of the article of Clear et al. is provided by Figures 1 and 2 thereof. In both embodiments the front and back fit panels 38 are of equal length and the front and back edges of the absorbent core are equidistant from the respective front and back ends of the article.

The Examiner asserts that these embodiments are irrelevant to the present case. See page 7, lines 4-6 of the Final Office action. If that is the case, then Clear et al. provide no basis whatsoever for the Examiner's conclusions. Nonetheless, appellants assert that these embodiments can teach either 1) that the absorbent core 28 length and position remains unchanged even if the rear fit panel is made longer than the front fit panel (which appears to be the Examiner's position), or 2) that the front and back edges of the absorbent core are to be equidistant from the respective front and back ends of the article, regardless of whether the front and rear fit

³ M.P.E.P. §2112 citing *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

KCC 4846 (K-C 16,993)
PATENT

panels are of the same length or a different length. Thus, it is at least equally possible that the relative lengths/positions of the topsheet 24, backsheet 26, front and back waist regions 34 and/or absorbent core 28 may be adjusted upon varying the lengths of the front and back fit regions 47, 45 so that the front and back edges of the absorbent core remain equidistant from the front and back ends of the article in accordance with what is taught in Figs. 1 and 2 of Clear et al. There is no disclosure found anywhere in the specification that expressly teaches one way or the other.

Absent a disclosure by Clear et al. of the necessary relationship between the front and back edges of the absorbent core 28 and the front and back ends of the article, it cannot be said that the front edge of the absorbent core being in closer proximity to the front end of the article than the back edge of the absorbent core is to the back end of the article is a necessary result of the teachings of Clear et al. Rather, it is but one possibility. Accordingly, such a recitation is not inherently disclosed by Clear et al.

For the above reasons, claim 107 is submitted to be unanticipated by and patentable over Clear et al.

Claims 83-89, 91-92, 106, and 108 depend directly or indirectly from claim 107 and are submitted to be patentable over Clear et al. for the same reasons as claim 107.

CLAIM 109

Claim 109 is directed to a disposable absorbent article having a longitudinal axis, a lateral axis, and a lateral centerline generally defining longitudinal front and back regions of the article. The article has a front end and a back end and comprises:

KCC 4846 (K-C 16,993)
PATENT

a liner adapted for contiguous relationship with a wearer's body, the liner having a length and a width and being stretchable along substantially the entire length of the liner;
an outer cover in generally opposed relationship with the liner;

the article having a surface area defined at least in part by said liner; and

an absorbent core disposed between the liner and the outer cover and having a front edge, a back edge, and a surface area which is less than about 50% of the surface area of the article, the front edge of the absorbent core being in a closer proximity to the front end of the article than the back edge of the absorbent core is to the back end of the article, at least a portion of the absorbent core being bonded to said liner.

Claim 109 is submitted to be unanticipated by and patentable over Clear et al. for reasons substantially similar to those set forth above with respect to claim 107. That is, Clear et al. fail to disclose or suggest a disposable absorbent garment in which an absorbent core of the article has a front edge of the absorbent core in closer proximity to a front end of the article than a back edge of the absorbent core is to a back end of the article.

Claim 110 depends directly from claim 109 and is submitted to be patentable over Clear et al. for the same reasons as claim 109.

CLAIM 111

Claim 111 is directed to a disposable absorbent article having a longitudinal axis, a lateral axis, and a lateral centerline generally defining longitudinal front and back

KCC 4846 (K-C 16,993)
PATENT

regions of the article. The article has a front end and a back end and comprises:

a liner adapted for contiguous relationship with a wearer's body;

an outer cover in generally opposed relationship with the liner, at least one of said liner and said outer cover being stretchable in at least one direction, the article having a surface area defined at least in part by at least one of said liner and said outer cover; and

an absorbent core disposed between the liner and the outer cover and having a front edge, a back edge, and a surface area which is less than about 50% of the surface area of the article, the front edge of the absorbent core being in a closer proximity to the front end of the article than the back edge of the absorbent core is to the back end of the article, said at least one of said liner and said outer cover extending beyond the front and back edges of the absorbent core and being stretchable adjacent said front and back edges.

Claim 111 is submitted to be unanticipated by and patentable over Clear et al. in that the cited reference fails to disclose or otherwise even suggest a disposable absorbent garment having an absorbent core disposed between the liner and the outer cover and having a front edge, a back edge, and a surface area which is less than about 50% of the surface area of the article, the front edge of the absorbent core being in a closer proximity to the front end of the article than the back edge of the absorbent core is to the back end of the article, and at least one of the liner and the outer cover extending beyond the front and back edges of the absorbent core and being stretchable adjacent the front and back edges.

KCC 4846 (K-C 16,993)
PATENT

Clear et al., as discussed above with respect to claim 107, fail to explicitly or inherently disclose a front edge of an absorbent core disposed closer in proximity to the front edge of the article than a back edge of the absorbent core is to the back end of the article. Thus, claim 111 is submitted to be unanticipated by and patentable over Clear et al. for at least the same reasons as claim 107.

B. Claims 83-89, 91, 92, 100-102, and 106-111 are submitted to be unanticipated by and patentable over U.S. Patent No. 5,904,673 (Roe et al.).

CLAIM 107

Claim 107 is submitted to be unanticipated by and patentable over Roe et al. in that the cited reference fails to disclose or otherwise even suggest a disposable absorbent garment in which 1) at least a portion of the absorbent core is bonded to a stretchable outer cover, and 2) the outer cover is stretchable along substantially the entire length of the outer cover.

Roe et al. disclose an absorbent article (e.g., a diaper) 20 having a generally "T-shape" comprising a liquid impervious topsheet 24, a liquid impervious backsheet 26, an absorbent core 28 between the topsheet and backsheet and an extensible waist belt 32. There is no disclosure or suggestion found anywhere in Roe et al. that the backsheet 26 is stretchable. Rather, only the waist belt 32 is disclosed by Roe et al. as being stretchable and the Examiner does not contend that the waist belt, in and of itself, satisfies the recitation that the outer cover be stretchable along substantially the entire length of the outer cover. Clearly it does not.

KCC 4846 (K-C 16,993)
PATENT

At page 2 of the final Office action, the Examiner interprets the recitation in claim 107 of an outer cover that is stretchable "along substantially the entire length of the outer cover" as meaning that the outer cover is stretchable in at least one or some direction at each point along a length which length runs the entirety of the outer cover. However, there is no disclosure or suggestion found anywhere in Roe et al. that the backsheet 26 is stretchable at each point along the length of the backsheet.

The Examiner simultaneously addresses independent claims 107, 109 and 111 on page 4 of the final Office action with respect to the stretchability feature recited in each of these claims, even though the particular element and/or location of stretchability is different in each of the claims. In any event, as best understood the Examiner relies on the disclosure of Roe et al. at column 10, lines 22-52 as teaching that the backsheet 26 is stretchable along substantially its entire length. In particular, the cited passage discloses that the chassis assembly 22 of Roe et al. may include elasticized leg cuffs 30 to improve containment of liquids and other body exudates. The Examiner cites U.S. Patent No. 4,695,278 (Lawson), which is incorporated by reference into Roe et al., in support of this position.

Lawson discloses a diaper 20 having a liquid pervious topsheet 38, a liquid impervious backsheet 42, and an absorbent core 44 disposed between the topsheet and the backsheet. The diaper 20 also includes leg cuffs 56 having elastic members 60 that may extend the entire length of the diaper. It appears, as best understood by Appellants, that the Examiner has taken the position that the backsheet of the diaper is stretchable as a result of the leg cuffs. In Lawson, however, the outer cover

KCC 4846 (K-C 16,993)
PATENT

(or backsheet 42) is not stretchable along substantially the entire length of the outer cover as recited in claim 107. Instead, the elastic members of Lawson are stretchable, not the backsheet.

In the present invention, on the other hand, the outer cover itself is stretchable along its length. As set forth in more detail on pages 21-24 of the present application, the material that is used to make the outer cover is stretchable. In other words, the outer cover has an unstretched length that is less than a stretched length. In Lawson, the length of the backsheet remains unchanged. The backsheet has the same length whether it is gathered by the elastic members or if it is pulled taut such that the backsheet is relatively flat. This distinction is further supported by the fact that the present specification clearly distinguishes between the use of leg cuffs having elastic members and the stretchable over cover. More particularly, Figure 1 of the present application shows leg elastic members 6 that have been adhered to the outer cover 17. Thus, Roe et al. even with the incorporation by reference of Lawson fails to teach or suggest that the outer cover is stretchable along substantially the entire length of the outer cover as recited in claim 107.

Moreover, Roe et al. fail to disclose or suggest that at least a portion of the absorbent core 28 is bonded to a stretchable backsheet 26. Rather, only the waist belt 32 is indicated by Roe et al. as being extensible, and the absorbent core 28 of Roe et al. is not bonded to, nor does it even extend within, the waist belt. The passages cited by the Examiner as disclosing a stretchable liner and/or outer cover are directed only to construction of the waist belt, and not to any portion of the liner/outer cover between which the absorbent core is

KCC 4846 (K-C 16,993)
PATENT

disposed. Accordingly, Roe et al. also fail to disclose or otherwise even suggest that the absorbent core is bonded to the stretchable outer cover.

For these reasons, claim 107 is submitted to be unanticipated by and patentable over Roe et al.

In view of the above, claim 107 is submitted to be unanticipated by and patentable over the references of record.

Claims 83-94, 100-102, 106, and 108 depend directly or indirectly from claim 107 and are submitted to be patentable over the references of record for the same reasons as claim 107.

CLAIM 109

Claim 109 is submitted to be unanticipated by and patentable over the references of record, and in particular Roe et al. for reasons substantially similar to those set forth above with respect to claim 107. That is, whether considered alone or in combination the references fail to show or suggest a disposable absorbent garment in which at least a portion of the absorbent core is bonded to a stretchable liner, and the liner having a length and a width and being stretchable along substantially the entire length of the liner.

Claim 110 depends directly from claim 109 and is submitted to be patentable over the references of record for the same reasons as claim 109.

CLAIM 111

Claim 111 is submitted to be unanticipated by and patentable over the references of record, and in particular Roe et al., in that whether considered alone or in combination the references fail to show or suggest a disposable absorbent

KCC 4846 (K-C 16,993)
PATENT

garment having an absorbent core disposed between the liner and the outer cover and having a front edge, a back edge, and a surface area which is less than about 50% of the surface area of the article, the front edge of the absorbent core being in a closer proximity to the front end of the article than the back edge of the absorbent core is to the back end of the article, and at least one of the liner and the outer cover extending beyond the front and back edges of the absorbent core and being stretchable adjacent said front and back edges.

Roe et al., as discussed previously, disclose that only the waist belt 32 is extensible, and the absorbent core 28 of Roe et al. is spaced from the waist belt. Thus, Roe et al. do not disclose or even suggest either a stretchable liner or a stretchable outer cover extending beyond the front and back edges of the absorbent core, as recited in claim 111.

For these reasons, claim 111 is submitted to be unanticipated by and patentable over Roe et al.

VIII. CONCLUSION

For the reasons stated above, appellants respectfully request that the Office's rejections be reversed and that claims 83-93, 100-102, and 106-111 be allowed.

The Commissioner is hereby authorized to charge the fee for the appeal brief in the amount of \$500 to Deposit Account No. 19-1345. The Commissioner is hereby authorized to charge

KCC 4846 (K-C 16,993)
PATENT

any additional fees which may be required to Deposit Account
No. 19-1345.

Respectfully submitted,



Richard L. Bridge, Reg. No. 40.529
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

RLB/PEB/bcw

VIA FACSIMILE (571) 273-8300

KCC 4846 (K-C 16,993)
PATENT

CLAIMS APPENDIX

83. The disposable absorbent article as set forth in claim 107, wherein the outer cover is stretchable along the entire width of the outer cover.

84. The disposable absorbent article as set forth in claim 83 wherein said outer cover is capable of lateral elongation of about 10 percent when the article is subjected to a laterally directed tensile force of about 100 gmf per inch (per 2.54 cm) of width of said outer cover.

85. The disposable absorbent article as set forth in claim 83 wherein said outer cover is capable of lateral elongation of about 20 percent when the article is subjected to a laterally directed tensile force of about 100 gmf per inch (per 2.54 cm) of width of said outer cover.

86. The disposable absorbent article as set forth in claim 83 wherein said outer cover is capable of lateral elongation of about 30 percent when the article is subjected to a laterally directed tensile force of about 100 gmf per inch (per 2.54 cm) of width of said outer cover.

87. The disposable absorbent article as set forth in claim 83 wherein said outer cover is capable of lateral elongation of about 40 percent when the article is subjected to a laterally directed tensile force of about 100 gmf per inch (per 2.54 cm) of width of said outer cover.

88. The disposable absorbent article as set forth in claim 83 wherein said outer cover is capable of substantially permanent elongation laterally of said article whereby the

KCC 4846 (K-C 16,993)
PATENT

width of said outer cover is increased at least about 17 percent when the article is subjected to a laterally directed tensile force of about 100 gmf per inch (per 2.54 cm) of width of said outer cover.

89. The disposable absorbent article as set forth in claim 83 wherein said outer cover is capable of substantially permanent elongation laterally of said article whereby the width of said outer cover is increased at least about 30 percent when the article is subjected to a laterally directed tensile force of about 100 gmf per inch (per 2.54 cm) of width of said article.

90. The disposable absorbent article as set forth in claim 83 wherein the outer cover comprises a necked laminate having at least one layer of a non-elastic neckable material and at least one layer of a non-elastic film.

91. The disposable absorbent article as set forth in claim 83, wherein the outer cover is elastic.

92. The disposable absorbent article as set forth in claim 91, wherein the outer cover is elastic at least laterally of the article.

93. The disposable absorbent article as set forth in claim 91 wherein the outer cover comprises a polypropylene spunbond laminated with styrene-isoprene-styrene-based adhesive.

100. The disposable absorbent article as set forth in claim 106 wherein said article is a diaper.

KCC 4846 (K-C 16,993)
PATENT

101. The disposable absorbent article as set forth in claim 106, wherein the surface area defined by said portion of the absorbent core is less than or equal to about 40% of the surface area of the front half of said article.

102. The disposable absorbent article as set forth in claim 106 wherein the surface area defined by said portion of the absorbent core is less than or equal to about 30% of the surface area of the front half of said article.

106. The disposable absorbent article as set forth in claim 107 wherein said front half of the article has a surface area and at least a portion of the absorbent core extends into the front half of the article, said portion of the absorbent core having a surface area which is less than about 50% of the surface area of the front half of said article.

107. A disposable absorbent article having a longitudinal axis, a lateral axis, and a lateral centerline generally defining longitudinal front and back regions of the article, said article having a front end and a back end, said article comprising:

- a liner adapted for contiguous relationship with a wearer's body;

- an outer cover in generally opposed relationship with the liner, the outer cover having a length and a width and being stretchable along substantially the entire length of the outer cover;

- the article having a surface area defined at least in part by said outer cover; and

- an absorbent core disposed between the liner and the outer cover and having a front edge, a back edge, and a surface area

KCC 4846 (K-C 16,993)
PATENT

which is less than about 50% of the surface area of the article, the front edge of the absorbent core being in a closer proximity to the front end of the article than the back edge of the absorbent core is to the back end of the article, at least a portion of the absorbent core being bonded to said outer cover.

108. A disposable absorbent article as set forth in claim 107 wherein the liner has a length and a width, said liner being stretchable along substantially the entire length of the liner.

109. A disposable absorbent article having a longitudinal axis, a lateral axis, and a lateral centerline generally defining longitudinal front and back regions of the article, said article having a front end and a back end and comprising:

a liner adapted for contiguous relationship with a wearer's body, the liner having a length and a width and being stretchable along substantially the entire length of the liner;

an outer cover in generally opposed relationship with the liner;

the article having a surface area defined at least in part by said liner; and

an absorbent core disposed between the liner and the outer cover and having a front edge, a back edge, and a surface area which is less than about 50% of the surface area of the article, the front edge of the absorbent core being in a closer proximity to the front end of the article than the back edge of

KCC 4846 (K-C 16,993)
PATENT

the absorbent core is to the back end of the article, at least a portion of the absorbent core being bonded to said liner.

110. A disposable absorbent article as set forth in claim 108 wherein said outer cover has a length and a width, said outer cover being stretchable along substantially the entire length of the outer cover.

111. A disposable absorbent article having a longitudinal axis, a lateral axis, and a lateral centerline generally defining longitudinal front and back regions of the article, said article having a front end and a back end and comprising:
a liner adapted for contiguous relationship with a wearer's body;

an outer cover in generally opposed relationship with the liner, at least one of said liner and said outer cover being stretchable in at least one direction, the article having a surface area defined at least in part by at least one of said liner and said outer cover; and

an absorbent core disposed between the liner and the outer cover and having a front edge, a back edge, and a surface area which is less than about 50% of the surface area of the article, the front edge of the absorbent core being in a closer proximity to the front end of the article than the back edge of the absorbent core is to the back end of the article, said at least one of said liner and said outer cover extending beyond the front and back edges of the absorbent core and being stretchable adjacent said front and back edges.

KCC 4846 (K-C 16,993)
PATENT

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.